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8 UNITED STATES DISTRICT COURT

9 EASTERN DISTRICT OF CALIFORNIA – BAKERSFIELD DIVISION

10
11 Suzanne Massey,

12 Plaintiff,

13 v.

14 Capital One Bank (USA), N.A.

15 Defendant.
16

CASE NO. 1:20-cv-0

PLAINTIFF’S COMPLAINT FOR DAMAGES:

1. Violation of the Rosenthal Fair Debt Collection Practices Act
2. Violation of the Telephone Consumer Protection Act

17
18 COMES NOW Plaintiff Suzanne Massey, an individual, based on information and belief,
19 to allege as follows:

20 **INTRODUCTION**

21 1. This is an action for damages brought by an individual consumer for Defendant’s violations
22 of the Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code §1788, *et seq.* (hereinafter
23 “Rosenthal Act”), which prohibits debt collectors from engaging in abusive, deceptive, and unfair
24 practices and violation of the Telephone Consumer Protection Act 47 U.S.C. §227, *et seq.*
25 (hereinafter “TCPA”), which prohibits the use of automated dialing equipment when making calls
26 to consumers.
27
28

1 2. Plaintiff brings this action against Defendant Capital One Bank USA, N.A. (hereinafter
2 “Defendant” or “Capital One”) for its abusive and outrageous conduct in connection with debt
3 collection activity.

4 3. In Calif. Civil Code § 1788.1(a)-(b), the California Legislature made the following findings
5 and purpose in creating the Rosenthal Act:

6 (a)(1) The banking and credit system and grantors of credit to consumers are
7 dependent upon the collection of just and owing debts. Unfair or deceptive
8 collection practices undermine the public confidence which is essential to the
9 continued functioning of the banking and credit system and sound extensions of
10 credit to consumers.

11 (2) There is need to ensure that debt collectors and debtors exercise their
12 responsibilities to another with fairness and honesty and due regard or the rights of
13 the other.

14 (b) It is the purpose of this title to prohibit debt collectors from engaging in unfair
15 or deceptive acts or practices in the collection of consumer debts and to require
16 debtors to act fairly in entering into and honoring such debts, as specified in this
17 title.

18 4. While many violations are described below with specificity, this Complaint alleges
19 violations of the statutes cited in their entirety.

20 5. The TCPA was designed to prevent calls like the ones described herein, and to protect the
21 privacy of citizens like Plaintiff, and by enacting the TCPA, Congress intended to give consumers
22 a choice as to how corporate entities may contact them and to prevent the nuisance associated with
23 automated or prerecorded calls.

24 **JURISDICTION & VENUE**

25 6. This Court has jurisdiction under 28 U.S.C. §§ 1331, 1337, and 1367, and 47 U.S.C. § 227.

26 7. This venue is proper pursuant to 28 U.S.C. §1391(b).

27 8. Plaintiff is a citizen of the State of California and resides within this judicial district.

28 9. Defendant is a national association that does business throughout the United States,
including California.

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GENERAL ALLEGATIONS

10. Plaintiff Suzanne Massey (hereinafter “Plaintiff”) is an individual residing in the state of California and is a “debtor” as defined by Cal. Civ. Code §1788.2(g).

11. At all relevant times herein, Capital One was a company engaged, by the use of mail, email, and telephone, in the business of collecting a debt from Plaintiff, and a “consumer debt,” as defined by Cal. Civ. Code §1788.2(f).

12. At all relevant times, Defendant acted as a “debt collector” within the meaning of Cal. Civ. Code §1788.2(c)

13. Plaintiff opened an unsecured credit account with Defendant in 2015.

14. The account Plaintiff opened with Defendant was primarily for personal, family or household purposes and is therefore a “debt” as that term is defined by the Calif. Civil Code § 1788.2(d) of the Rosenthal Act.

15. Defendant has been attempting to collect on a debt that originated from monetary credit that was extended primarily for personal, family, or household purposes, and was therefore a “consumer credit transaction” within the meaning of Calif. Civil Code § 1788.2(3) of the Rosenthal Act.

16. Because Plaintiff, a natural person allegedly obligated to pay money to Defendant arising from what Plaintiff is informed and believes was a consumer credit transaction, the money allegedly owed was a “consumer debt” within the meaning of California Civil Code § 1788.2(f) of the Rosenthal Act.

17. Plaintiff is informed and believes that Defendant is one who regularly collects or attempts to collect debts on behalf of themselves, and is therefore a “debt collector” within the meaning of the Calif. Civil Code § 1788.2(c) of the Rosenthal Act, and thereby engages in “debt collection” within the meaning of the California Civil Code § 1788.2(b) of the Rosenthal Act, and is also therefore a “person” within the meaning of California Civil Code § 1788.2(g) of the Rosenthal Act.

18. Plaintiff’s account was an unsecured credit account and Plaintiff began making payments on the card shortly after it was opened.

1 19. Plaintiff was making payments on the account for several years before She became
2 financially unable to keep up with the monthly payments.

3 20. Defendant began contacting Plaintiff in approximately January of 2020 to inquire about
4 the status of the accounts and to collect on the payments that were no longer being made.

5 21. Plaintiff retained counsel to assist in dealing with Defendant's debt and to seek some type
6 of financial relief.

7 22. Counsel for Plaintiff sent Defendant a letter confirming representation of Plaintiff and
8 informing Defendant that it was to no longer contact Plaintiff directly and that all
9 calls/letters/collection efforts were to no longer be directed at Plaintiff.

10 23. The contents of the letter also informed Defendant that Plaintiff was withdrawing her
11 consent to be contacted on her cellular telephone.

12 24. Counsel for Plaintiff sent the letter of representation via certified mail to Defendant on
13 February 12, 2020.

14 25. Defendant received and processed the certified letter on February 18, 2020

15 26. Plaintiff informed Defendant that she was revoking her consent to be called on her cellular
16 telephone in February of 2020.

17 27. Defendant continued to contact Plaintiff even after receiving the February 12, 2020 letter
18 of representation and revocation of consent.

19 28. Defendant understood and processed the February 12, 2020 letter, although decided to
20 contact Plaintiff directly about the letter of representation.

21 29. A second letter of representation and statement was sent to Defendant on March 10, 2020
22 to reiterate that Plaintiff was represented by Counsel and that directly contacting her was a
23 violation of state and federal collection laws.

24 30. Defendant received the second letter.

25 31. Defendant, despite receiving notices from Plaintiff, continued to contact Plaintiff through
26 phone calls to Plaintiff's cellular telephone.

27 32. Defendant would sometimes call Plaintiff numerous times each day demanding payment
28 on the account.

33. Defendant would use an automatic dialing machine when placing the calls to Plaintiff.

34. Plaintiff was contacted repeatedly regarding non-payment of the debt owed to Defendant despite Defendant being notified that Plaintiff had retained counsel to deal specifically with the debt owed to Defendant and that Plaintiff revoked consent to be contacted on his cellular telephone.

35. Defendant's calls were frequent in nature and continued despite receiving written confirmation that Plaintiff was represented by an attorney and that all calls to Plaintiff's cellular telephone were to stop.

36. Despite receiving two written notices regarding Plaintiff's representation by counsel and revocation of her consent to be contacted on her cellular telephone Defendant continued to call and contact Plaintiff daily regarding her account with Defendant.

FIRST CAUSE OF ACTION
(Violation of the Rosenthal Act)
(Cal. Civ. Code §§ 1788-1788.32)
(Against Defendant Capital One)

37. Plaintiff realleges and incorporates herein the allegation in each and every paragraph above as though fully set forth herein.

38. Plaintiff provided written notice that she was represented by sending Defendant a letter with the name, address, and contact information of her attorney and informed Defendant that she was represented.

39. Defendant continued to call and attempt to make contact with Plaintiff despite receiving notice of representation and being informed that Plaintiff had retained counsel in an effort to deal with the debt that was owed to Defendant.

40. The calls and communications made by Defendant to Plaintiff were not related to statements of Plaintiff's account and were attempts to collect a debt.

41. To date Plaintiff has received over twenty calls and from Defendant after Defendant was made aware that Plaintiff was represented by an attorney.

42. Defendant violated Cal. Civ. Code §1788.14 by contacting Plaintiff after receiving notice that Plaintiff had retained an attorney.

SECOND CAUSE OF ACTION

(Violation of the TCPA)
(47 USC § 227)
(Against Defendant Capital One)

43. Plaintiff realleges and incorporates herein the allegation in each and every paragraph above as though fully set forth herein.

44. Since at least early January of 2020 Defendant started calling Plaintiff's cellular telephone requesting that payment be made on the account Plaintiff held with Defendant.

45. Defendant was informed that Plaintiff revoked her consent to be contacted by Defendant in February of 2020.

46. Defendant called Plaintiff numerous times since Plaintiff withdrew her consent to be contacted by an automatic dialing machine.

47. Defendant would contact Plaintiff nearly daily regarding payment on the accounts.

48. Defendant placed the above cited calls using an artificial or prerecorded voice to deliver the collection messages without Plaintiff's prior express consent.

49. All calls placed by Defendant to Plaintiff utilized an "automatic telephone dialing system" as defined by 47 U.S.C. §227(a)(1).

50. These calls were made to Plaintiff's cellular telephone and were not calls for an emergency purposed as defined by 47 U.S.C. §227(b)(1)(B).

51. Plaintiff expressly revoked any consent that may have previously been given to Defendant to be contacted by an automatic dialing machine in February of 2020.

52. Overall Plaintiff was contacted on at least 20 (twenty) separate occasions by Defendant on his cellular phone despite informing Defendant that she was revoking any consent to be contacted on her cellular telephone.

53. These telephone calls by Defendant, or its agent, violated 47 U.S.C. §227(b)(1)(A)(iii).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

- a. An award of actual damages pursuant to California Civil Code §1788.30(a), as will be proven at trial, which are cumulative and in addition to all other remedies

provided for in any other cause of action pursuant to California Civil Code §1788.32.

- b. An award of statutory damages of \$1,000.00 pursuant to Cal. Civ. Code §1788.30(b), which are cumulative and in addition to all other remedies provided for in California Civil Code §1788.32; and
- c. An award of costs of litigation and reasonable attorney's fees pursuant to Cal. Civ. Code §1788.30(c).
- d. An award of statutory damages of \$1,500.00 pursuant to 47 U.S.C. §227(b)(3)(C) for each and every violation.
- e. Pursuant to 47 U.S.C. §227(b)(3)(A), injunctive relief prohibiting such conduct in the future.

Gale, Angelo, Johnson, & Pruett, P.C.

Dated: October 12, 2020

By: /s/ Joe Angelo
Joe Angelo
Elliot Gale
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of this matter by jury.

Gale, Angelo, Johnson, & Pruett, P.C.

Dated: October 12, 2020

/s/ Joe Angelo
Joe Angelo
Elliot Gale
Attorneys for Plaintiff